



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 175552

PRELIMINARY RECITALS

Pursuant to a petition filed on July 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services regarding Medical Assistance (MA), a hearing was held on August 11, 2016, by telephone.

The issue for determination is whether the department correctly determined that the petitioner's house is an available asset that put him over the institutional medical assistance asset limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Pierce County.

2. The petitioner and his spouse entered a nursing home on January 21, 2016.
3. On January 20, 2016, the petitioner's physician stated in writing that the petitioner intended to return home within six months.
4. The petitioner's house is worth \$49,000.
5. On February 22, 2016, the department notified the petitioner that he was eligible for institutional medical assistance as of April 1, 2016.
6. On March 22, 2016, [REDACTED] of the ADRC filed a form on the petitioner's behalf indicating he intended to disenroll from the Family Care Program. Mr. [REDACTED] indicated on the fax cover sheet that the petitioner "plans to stay in NH at Plum City Care Center."
7. On May 11, 2016, the department notified the petitioner that his institutional medical assistance would end on June 1, 2016, because his assets exceeded the program's limit. It made this decision after determining that his house was an available asset because he did not intend to return home.

DISCUSSION

A married person cannot receive institutional medical assistance if his "actually available" assets exceed \$3,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3m.e. An institutionalized person's home is not considered available if he "intends to return to the home and the anticipated absence from the home, as verified by a physician, is less than 12 months." Wis. Admin. Code, § DHS 103.06(1)(b)2. The department's policy exempts an institutionalized person's home if he "expresses his...intent to return to the home." If he can form intent but cannot express it, the agency is instructed to determine his intent through his written statements, his oral statements made before he was incapacitated, and reports of his authorized representative. *Medicaid Eligibility Handbook*, § 16.8.1.3.

The petitioner and his spouse entered a nursing home on January 21, 2016. The day before, their physician wrote a letter indicating that they intended to return home within six months. On February 22, 2016, the department notified them that they would be eligible for institutional medical assistance on April 1, 2016. They had been receiving Family Care benefits. On March 22, 2016, [REDACTED] of the ADRC filed a forms for each them indicating that they intended to disenroll from the Family Care Program. Mr. [REDACTED] state on each of the fax cover sheets that the recipient "plans to stay in NH at Plum City Care Center." The department assumed this meant that they no longer intended to return home. On May 11, 2016, notified the petitioners that their institutional medical assistance would end on June 1, 2016, because their house, which was worth \$49,000, was now available and caused their assets to exceed the program's limit.

The petitioner and his spouse contend that the house remains an exempt asset because Mr. [REDACTED] was not their authorized representative. Neither the petitioner nor his spouse had a guardian or power of attorney and both remained capable of making their own decisions. And even if they needed help making a decision, they contend that Mr. [REDACTED] did not qualify as their authorized representative because he was not their legal guardian. As a result, they assert that their previously stated desire to return home remained in effect, their house remained exempt, and they should have continued to receive benefits in June 2016. (That is the only month in question because they regained their eligibility the next month by listing their house with a realtor.)

The facts as presented establish that the petitioner could express intent to return home without assistance from others. This means that under the policy, there was no need to consult anyone else concerning his intent. Still, nothing in the policy or administrative code indicates that once expressed, an intent to return home remains in effect if the evidence indicates that that is no longer the person's intent. While it was Mr.

████ and not the petitioner who indicated that he intended to remain in the nursing home, Mr. █████ was undoubtedly acting according to the petitioner's wishes when he requested that the agency end the petitioner's participation in the Family Care program. Family Care is meant for people who live in the community. *See* Wis. Stat. § 46.286. Because of this, the most reasonable explanation for the petitioner's decision to end Family Care benefits—and it was the petitioner's and not Mr. █████'s decision—is that he intended to remain in the nursing home. At that point, by his own actions, he indicated that he no longer intended to return home. Because he no longer intended to return home, his house became an available asset that caused him to exceed the medical assistance program's asset limit. Therefore, the county agency correctly determined that he was no longer eligible for the program.

CONCLUSIONS OF LAW

The county agency correctly ended the petitioner's medical assistance benefits because his assets exceeded the program's limit when his house became available after he decided that he would no longer return to it.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of September, 2016

\s_____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 14, 2016.

Pierce County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]